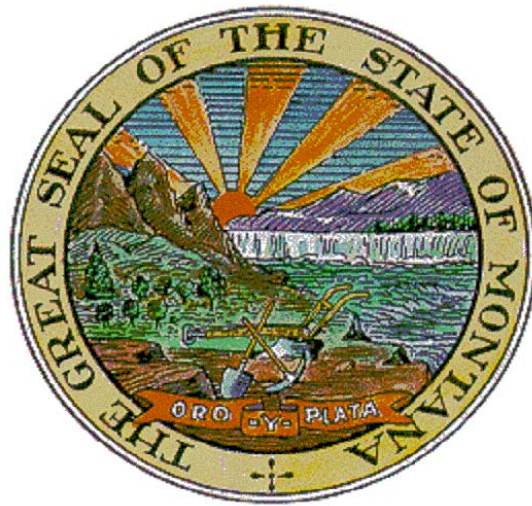


State of Montana  
Department of Labor and Industry  
Business Standards Division

DEPARTMENT AND BOARD SPECIFIC STATUTES  
RELATING TO PUBLIC ACCOUNTANTS



ISSUED BY:

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UPDATED 2005

**2-15-1701. Department of labor and industry -- head.** (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner shall be appointed and serve as provided for directors in [2-15-111](#).

(3) The commissioner shall receive an annual salary in such amount as may be specified by the legislature in the appropriation to the department of labor and industry.

(4) Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution.

**History:** (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979; amd. Sec. 1, Ch. 116, L. 1981.

**2-15-1756. Board of public accountants.** (1) There is a board of public accountants.

(2) The board consists of seven members appointed by the governor. The members are:

(a) four certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before being appointed. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before being appointed. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in subsection (2)(a).

(c) two members of the general public who are not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and must be submitted for consideration at the next regular session following appointment.

(4) The members shall serve staggered 5-year terms. A member may not serve consecutive 5-year terms on the board. A member is eligible for reappointment to the board after 1 year or more has elapsed. The governor may remove a member for neglect of duty or other just cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in [2-15-121](#).

**History:** (1) thru (4)En. Sec. 1, Ch. 118, L. 1969; Sec. 66-1813, R.C.M. 1947; amd. and redes. 82A-1602.2 by Sec. 161, Ch. 350, L. 1974; Sec. 82A-1602.2, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.2; amd. Sec. 3, Ch. 684, L. 1979; MCA 1979, , redes. by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 382, L. 1989; Sec. , MCA 1999; redes. by Sec. 221(2), Ch. 483, L. 2001; amd. Sec. 4, Ch. 126, L. 2005.

## **TITLE 37**

### **CHAPTER 1**

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## **Part 1**

### **Duties and Authority of Department, Director, and Boards**

#### **Part Cross-References**

- Contested cases, Title 2, ch. 4, part 6.
- Appointment and qualifications of department heads -- duties, 2-15-111, 2-15-112.
- Allocation for administrative purposes only, 2-15-121.
- Department and boards created, Title 2, ch. 15, part 18.
- Department's duties for Board of Horseracing, 23-4-103.
- Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.

**37-1-101. Duties of department.** In addition to the provisions of 2-15-121, the department of labor and industry shall:

- (1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;
- (2) standardize policies and procedures and keep in Helena all official records of the boards;
- (3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;
- (4) contract for or administer and grade examinations required by each board;
- (5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;
- (6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;
- (7) adopt rules setting administrative fees and expiration, renewal, and

termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);

(9) provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

**History:** En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005.

**37-1-102. Renumbered 37-1-121.** Code Commissioner, 1981.

**37-1-103. Renumbered 37-1-131.** Code Commissioner, 1981.

**37-1-104. Standardized forms.** The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

**History:** En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

**37-1-105. Reporting disciplinary actions against licensees.** The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

**History:** En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

**37-1-106. Biennial report.** The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program

planning as a part of the information required by 17-7-111.

**History:** En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

**37-1-107 through 37-1-120 reserved.**

**37-1-121. Duties of commissioner.** In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

**History:** En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; reds. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.

**37-1-122 through 37-1-129 reserved.**

**37-1-130. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 45 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for

the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

**History:** En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005.

**37-1-131. Duties of boards -- quorum required.** A quorum of each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(4) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(7) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure as provided in 37-1-306. If the board or department requires continuing education for continued licensure, the board or department may not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after



the renewal period closes.

(8) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

**History:** En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005.

### **37-1-132. Nominees for appointment to licensing and regulatory boards.**

Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

**History:** En. Sec. 9, Ch. 244, L. 1981.

## **Cross-References**

Appointing power, Art. VI, sec. 8, Mont. Const.

**37-1-133. Board members' compensation and expenses.** Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

**History:** En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

**37-1-134. Fees commensurate with costs.** Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the

fees charged for each program area.

**History:** En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

**37-1-135. Licensing investigation and review -- record access.** Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

**History:** En. Sec. 1, Ch. 242, L. 1981.

### **Cross-References**

Procurement of services, Title 18, ch. 8.

**37-1-136. Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

**History:** En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004.

### **Cross-References**

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

**37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.** (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

**History:** En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.

**37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.** (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

- (i) the license must be fully restored;
- (ii) conditions must be attached to the reservist's continued retention of the license; or
- (iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

**History: En. Sec. 2, Ch. 271, L. 2003.**

**37-1-139 and 37-1-140 reserved.**

**37-1-141. License renewal -- lapse -- expiration -- termination.** (1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

- (a) submit the completed renewal form;
- (b) pay the late penalty fee provided for in subsection (7); and
- (c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

**History:** En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.

## **Part 2**

### **Licensure of Criminal Offenders**

#### **Part Cross-References**

Criminal justice policy -- rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling -- qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

**37-1-201. Purpose.** It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

**History:** En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

**37-1-202. Intent and policy.** It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

**History:** En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

**37-1-203. Conviction not a sole basis for denial.** Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

**History:** En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

**37-1-204. Statement of reasons for denial.** When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

### **Cross-References**

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

**37-1-205. Licensure on completion of supervision.** Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

## **Part 3**

### **Uniform Professional Licensing and Regulation Procedures**

**37-1-301. Purpose.** The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

History: En. Sec. 1, Ch. 429, L. 1995.

**37-1-302. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline

against the person;

- (b) the status of compliance with a stipulation or order of the board;
- (c) whether a license should be granted, denied, or conditionally issued; or
- (d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

**History:** En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005.

**37-1-303. Scope.** This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(e), must be used by a board in all disciplinary proceedings involving licensed professionals.

**History:** En. Sec. 3, Ch. 429, L. 1995.

**37-1-304. Licensure of out-of-state applicants -- reciprocity.** (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

- (a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and
- (b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

**History:** En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

**37-1-305. Temporary practice permits.** (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or

until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

**History:** En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

**37-1-306. Continuing education.** A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

**History:** En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

**37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;  
(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

[(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the



number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] [1](Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)[2]

**History:** En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005.

**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

**History:** En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

**37-1-309. Notice -- request for hearing.** (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a

hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

**History:** En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

**37-1-310. Hearing -- adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

**History:** En. Sec. 10, Ch. 429, L. 1995.

**37-1-311. Findings of fact -- order -- report.** (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

- (a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;
- (b) appropriate public and private organizations that serve the profession or occupation; and
- (c) the public.

**History:** En. Sec. 11, Ch. 429, L. 1995.

**37-1-312. Sanctions -- stay -- costs -- stipulations.** (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

- (a) revocation of the license;
- (b) suspension of the license for a fixed or indefinite term;
- (c) restriction or limitation of the practice;
- (d) satisfactory completion of a specific program of remedial education or treatment;
- (e) monitoring of the practice by a supervisor approved by the disciplining authority;
- (f) censure or reprimand, either public or private;
- (g) compliance with conditions of probation for a designated period of time;
- (h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.
- (i) denial of a license application;
- (j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

**History:** En. Sec. 12, Ch. 429, L. 1995.

**37-1-313. Appeal.** A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

**History:** En. Sec. 13, Ch. 429, L. 1995.

**37-1-314. Reinstatement.** A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

**History:** En. Sec. 14, Ch. 429, L. 1995.

**37-1-315. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

**History:** En. Sec. 15, Ch. 429, L. 1995.

**37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an

examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

- (b) professional association; or
- (c) local, state, federal, territorial, provincial, or Indian tribal government;
- (18) conduct that does not meet the generally accepted standards of practice.

A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

**History:** En. Sec. 16, Ch. 429, L. 1995.

**37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

**History:** En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

**37-1-318. Violation of injunction -- penalty.** A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

**History:** En. Sec. 18, Ch. 429, L. 1995.

**37-1-319. Rules.** A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

**History:** En. Sec. 19, Ch. 429, L. 1995.

### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**37-1-320. Mental intent -- unprofessional conduct.** A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

**History:** En. Sec. 7, Ch. 492, L. 2001.

**37-1-321 through 37-1-330 reserved.**

**37-1-331. Correctional health care review team.** (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who

have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

**History:** En. Sec. 2, Ch. 375, L. 1999.

## **Part 4**

### **Uniform Regulations for Licensing Programs Without Boards**

**37-1-401. Uniform regulation for licensing programs without boards -- definitions.** As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, or 76; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, or 76; or

(b) Title 50, chapter 39, 74, or 76.

**History:** En. Sec. 1, Ch. 481, L. 1997; amd. Sec. 111, Ch. 483, L. 2001; amd. Sec. 21, Ch. 410, L. 2003.

**37-1-402. Unprofessional conduct -- complaint -- investigation -- immunity.** (1) A person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of this part, the department may investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

**History:** En. Sec. 2, Ch. 481, L. 1997.

**37-1-403. Notice -- request for hearing.** (1) If the department determines that reasonable cause exists supporting the allegation made in a complaint, the department legal staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the current address on file with the department or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the department the licensee's or applicant's current address and any change of address within 30 days of the change.



(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the department may enter a decision on the basis of the facts available to it.

**History:** En. Sec. 3, Ch. 481, L. 1997.

**37-1-404. Hearing -- adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence govern a hearing under this part. The department has all the powers and duties granted by Title 2, chapter 4.

**History:** En. Sec. 4, Ch. 481, L. 1997.

**37-1-405. Findings of fact -- order -- report.** (1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

- (a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;
- (b) appropriate public and private organizations that serve the profession or occupation; and
- (c) the public.

**History:** En. Sec. 5, Ch. 481, L. 1997.

**37-1-406. Sanctions -- stay -- costs -- stipulations.** (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (4), the department may issue an order providing for one or any combination of the following sanctions:

- (a) revocation of the license;
  - (b) suspension of the license for a fixed or indefinite term;
  - (c) restriction or limitation of the practice;
  - (d) satisfactory completion of a specific program of remedial education or treatment;
  - (e) monitoring of the practice by a supervisor approved by the disciplining authority;
  - (f) censure or reprimand, either public or private;
  - (g) compliance with conditions of probation for a designated period of time;
  - (h) payment of a fine not to exceed \$1,000 for each violation;
  - (i) denial of a license application;
  - (j) refund of costs and fees billed to and collected from a consumer.
- (2) Any fine collected by the department as a result of disciplinary actions

must be deposited in the state general fund.

(3) A sanction may be totally or partly stayed by the department. To determine which sanctions are appropriate, the department shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the department consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(4) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(5) A licensee shall surrender a suspended or revoked license to the department within 24 hours after receiving notification of the suspension or revocation by mailing the license or delivering it personally to the department.

**History:** En. Sec. 6, Ch. 481, L. 1997.

**37-1-407. Appeal.** A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

**History:** En. Sec. 7, Ch. 481, L. 1997.

**37-1-408. Reinstatement.** A licensee whose license has been suspended or revoked under this part may petition the department for reinstatement after an interval set by the department in the order. The department may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The department may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

**History:** En. Sec. 8, Ch. 481, L. 1997.

**37-1-409. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the department may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

**History:** En. Sec. 9, Ch. 481, L. 1997.

**37-1-410. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in

applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) the denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of the department;

(9) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(10) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(11) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(12) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

**History:** En. Sec. 10, Ch. 481, L. 1997.

**37-1-411. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The department may investigate a complaint or other information received concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part.

**History:** En. Sec. 11, Ch. 481, L. 1997; amd. Sec. 5, Ch. 230, L. 1999.

**37-1-412. Violation of injunction -- penalty.** (1) A person who has been

enjoined and who violates an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

**History:** En. Sec. 12, Ch. 481, L. 1997; amd. Sec. 6, Ch. 230, L. 1999.

**37-1-413. Department authority.** For each licensing program regulated by the department under this part, the department is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice.

**History:** En. Sec. 4, Ch. 230, L. 1999.

## **TITLE 37 CHAPTER 50 PART 1- 4**

### **PUBLIC ACCOUNTANTS**

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- 37-50-331. Repealed.
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- 37-50-336. Repealed.
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### Chapter Cross-References

Licensed public accountant -- exemption from regulation of escrow business, 32-7-103.

Professional service corporations, Title 35, ch. 4.

## Part 1

### General

**37-50-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1756.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Practice of public accounting" means performing or offering to perform by a person certified under 37-50-302 or licensed under 37-50-303, for a client or potential client, one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

**History:** En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 382, L. 1989; amd. Sec. 143, Ch. 483, L. 2001.

**37-50-102. Exemptions.** This chapter does not prohibit any person who is not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314, a partnership or corporation composed of certified public accountants or licensed public accountants registered

under this chapter, or a foreign accountant whose credentials have been recognized under 37-50-313. However, the employee or assistant may not issue any accounting or financial statement in the employee's or assistant's name.

**History:** En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979; amd. Sec. 1, Ch. 335, L. 1983; amd. Sec. 3, Ch. 375, L. 2003.

## **Part 2**

### **Board of Public Accountants**

#### **Part Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.  
Seal defined, 1-4-201.  
Adoption and publication of rules, Title 2, ch. 4, part 3.  
Public records, Title 2, ch. 6.  
Allocation of boards for administrative purposes, 2-15-121.  
Quasi-judicial boards, 2-15-124.  
Board established, 2-15-1756.  
Entries in official books and records prima facie evidence, 26-1-605.  
Entry made by officer or Board prima facie evidence, 26-1-606.  
Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).  
Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).  
Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).  
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.  
Duty of Board to adopt rules on conduct, 37-1-131.

#### **37-50-201. Organization -- general rulemaking power -- seal -- records.**

(1) The board shall elect annually a presiding officer and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) The board must have a seal that must be judicially noticed.

(4) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records.

**History:** En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979; amd. Sec. 2, Ch. 335, L. 1983; amd. Sec. 33, Ch. 492, L. 2001.

**37-50-202. Compensation of members -- expenses.** Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-

**History:** En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979; amd. Sec. 28, Ch. 474, L. 1981.

**37-50-203. Rules of the board.** (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit; and

(e) rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

(3) The board may adopt rules:

(a) governing partnerships, corporations, and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations;

(b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(ii) prescribing joint and several liability for torts relating to professional services for shareholders of a corporation or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i); and

(c) establishing education and experience qualifications for out-of-state and foreign accountants seeking authorization to practice in Montana.

**History:** En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979; amd. Sec. 3, Ch. 335, L. 1983; amd. Sec. 101, Ch. 429, L. 1995; amd. Sec. 42, Ch. 492, L. 1997; amd. Sec. 4, Ch. 375, L. 2003.

**37-50-204. Rulemaking powers relating to examinations.** The board may adopt rules for the following:

(1) the terms and conditions under which a candidate shall obtain credit for passing the required examination or portions of the examination;

(2) the period of time that candidates are allowed to apply for reexamination; and

(3) the fees to be charged each candidate for examinations and special examinations, which must be commensurate with costs.



**History:** En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826; amd. Sec. 3, Ch. 196, L. 2003.

**37-50-205. Duties of the department.** The department shall:

- (1) assist the board in transactions of its business and keep a record of the board's official action; and
- (2) assess to the board the reasonable costs of the department incurred in assisting the board.

**History:** En. Sec. 21, Ch. 684, L. 1979.

### **Part 3**

#### **Licensing**

##### **Part Cross-References**

- Licensing to follow contested case procedure, 2-4-631.
- Duty of Department to administer and grade examinations, 37-1-101.
- Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
- Licensing investigation and review -- record access, 37-1-135.
- Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.
- Licensure of criminal offenders, Title 37, ch. 1, part 2.
- Nondiscrimination in licensing, 49-3-204.

**37-50-301. Illegal use of title.** (1) A person may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current certificate as a certified public accountant under this chapter. However, a foreign accountant whose credentials are recognized under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received.

(2) A partnership or corporation may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the partnership or corporation is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335.

(3) A person may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.

(4) A partnership or corporation may not assume or use the title or

designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the partnership or corporation is composed of public accountants unless it is registered as required under 37-50-335.

(5) A person, corporation, or partnership may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant whose credentials are recognized under 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".

(6) A person may not sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties.

(7) A person may not sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation conforms to the requirements of 37-50-330 and is registered as required under 37-50-335.

(8) A person may not assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide partnership or corporation that has been formed subject to the provisions of 37-50-330 and registered under 37-50-335. However, it is lawful for a sole proprietor to continue the use of a deceased's name in connection with the sole proprietor's business for a reasonable period of time after the death of a former partner.

**History: En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979; amd. Sec. 162, Ch. 575, L. 1981; amd. Sec. 4, Ch. 335, L. 1983; amd. Sec. 2, Ch. 123, L. 2001; amd. Sec. 5, Ch. 375, L. 2003.**

**37-50-302. Certified public accountants -- certification -- qualifications and requirements.** The board shall grant an initial certificate as a certified public accountant to any person who:

- (1) is of good moral character;
- (2) has successfully passed the certified public accountants' examination; and
- (3) meets the requirements of education set forth in this chapter and in board rules.

**History:** En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979; amd. Sec. 5, Ch. 335, L. 1983.

**37-50-303. Public accountants -- licensure -- qualifications and requirements.** The board shall grant an initial license as a licensed public accountant to any person who:

- (1) is of good moral character;
- (2) meets the requirements of education set forth in this chapter and board rules; and
- (3) complies with the qualifications and requirements in any one of the subsections of 37-50-304.

**History:** En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820; amd. Sec. 6, Ch. 341, L. 1981; amd. Sec. 163, Ch. 575, L. 1981; amd. Sec. 6, Ch. 335, L. 1983.

**37-50-304. Public accountants -- licensure without examination of former military personnel -- examination otherwise required.** (1) A person serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering the armed forces represented to the public that the person was a public accountant and who was engaged as a principal in this state in the practice of public accounting as the person's principal occupation prior to service in the armed forces may register with the department within 6 months after the date of the person's separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) To be issued a license as a licensed public accountant, a person who does not qualify under subsection (1) shall successfully complete those portions of the examination prescribed by the board by rule. The board may require successful completion of alternate portions of the examination for applicants holding valid United States treasury cards at the time of taking the examination.

**History:** En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821; amd. Sec. 1, Ch. 218, L. 1993; amd. Sec. 100, Ch. 467, L. 2005.

**37-50-305. Education requirements.** (1) A candidate for initial certification as a certified public accountant or licensing as a licensed public accountant must

have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with an accounting concentration or its equivalent as determined by the board; and

(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.

(2) For the purposes of this section, "initial certification" means that the candidate has never been certified as a certified public accountant or licensed as a licensed public accountant by any jurisdiction.

**History:** En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979; amd. Sec. 7, Ch. 335, L. 1983; amd. Sec. 3, Ch. 382, L. 1989; amd. Sec. 4, Ch. 196, L. 2003.

**37-50-306. Repealed.** Sec. 26, Ch. 684, L. 1979.

**History:** En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(1), (2), (4), (5).

**37-50-307. Repealed.** Sec. 26, Ch. 684, L. 1979.

**History:** En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974; R.C.M. 1947, 66-1830.

**37-50-308. Repealed.** Sec. 127, Ch. 467, L. 2005.

**History:** En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979; amd. Sec. 8, Ch. 335, L. 1983; amd. Sec. 21, Ch. 230, L. 1999; amd. Sec. 5, Ch. 196, L. 2003.

**37-50-309. Credit for examinations taken in other jurisdictions.** The board may by rule provide for granting credit to a candidate for the satisfactory completion of an examination in any one or more of the subjects of examination given by the licensing authority in another jurisdiction.

**History:** En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(3); amd. Sec. 12, Ch. 684, L. 1979; amd. Sec. 6, Ch. 196, L. 2003.

**37-50-310. Existing certificates sufficient.** Persons who, on July 1, 1969, held certified public accountant certificates heretofore issued under the laws of this state shall not be required to obtain additional certificates under this chapter but shall otherwise be subject to all provisions of this chapter. Such certificates heretofore issued shall, for all purposes, be considered certificates issued under this chapter and subject to the provisions hereof.

**History:** En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

**37-50-311. Certified public accountants -- waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees.** The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible who is the holder of:

(1) a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state;

(2) a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in that country, comparable to that of a certified public accountant in this state, which is then in full force and effect; or

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application.

**History:** En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 9, Ch. 335, L. 1983; amd. Sec. 6, Ch. 375, L. 2003.

#### **Cross-References**

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

**37-50-312. Public accountants -- waiver of examination for holders of out-of-state license.** The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible who is the holder of:

(1) a license as a licensed public accountant, then in full force and effect, issued under the laws of any state;

(2) a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in that country, comparable to that of a licensed public accountant in this state, which is then in full force and effect; or

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application.

**History:** En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 10, Ch. 335, L. 1983; amd. Sec. 7, Ch. 375, L. 2003.

#### **Cross-References**

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

**37-50-313. Recognition of credentials of foreign accountants -- restriction on title used -- practice.** (1) The board may in its discretion recognize the credentials of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in that country. A person whose credentials are recognized may use only the title under which the person is generally known in that country, followed by the name of the country from which the person

received the certificate, license, or degree.

(2) A person whose credentials are recognized by the board may practice public accounting under the terms and conditions established by the board.

**History:** En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828; amd. Sec. 8, Ch. 375, L. 2003.

**37-50-314. Permit required -- display.** (1) A person may not engage in the practice of public accounting in this state without a current permit issued by the department. A permit to engage in the practice of public accounting in this state must be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) The current permit to engage in the practice of public accounting must be prominently displayed for public inspection.

**History:** En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979; amd. Sec. 11, Ch. 335, L. 1983; amd. Sec. 102, Ch. 429, L. 1995; amd. Sec. 43, Ch. 492, L. 1997.

**37-50-315. Deposit of moneys collected.** Fees and other moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

**History:** En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

**37-50-316. Other license fees prohibited.** No certificate, permit, or license fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter.

**History:** En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947, 66-1842; amd. Sec. 12, Ch. 335, L. 1983.

**37-50-317. Repealed.** Sec. 127, Ch. 467, L. 2005.

**History:** En. Sec. 13, Ch. 335, L. 1983; amd. Sec. 103, Ch. 429, L. 1995; amd. Sec. 44, Ch. 492, L. 1997; amd. Sec. 47, Ch. 271, L. 2003.

**37-50-318 through 37-50-320 reserved.**

**37-50-321. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979; amd. Sec. 14, Ch. 335, L. 1983.

**37-50-322. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837; amd. Sec. 15, Ch. 335, L. 1983.

**37-50-323. Special practice permit for nonresident certified public accountant -- rules.** (1) A person may obtain a special practice permit if the person:

- (a) is not a Montana resident;
- (b) does not maintain an office in Montana;
- (c) is licensed, under an active status license, to practice public accounting as a certified public accountant in one or more jurisdictions recognized by the board as having licensing standards substantially equivalent to the standards authorizing the practice of public accounting in this state; and
- (d) has not had an adverse disciplinary action taken against the person for the practice of public accounting by any other jurisdiction.

(2) A person who obtains a special practice permit:

- (a) is subject to the disciplinary authority of the board for acts performed pursuant to this section in this state; and

(b) consents to the appointment of the board of accountancy or a corresponding entity of the jurisdiction in which the person was issued a license to practice public accounting as a certified public accountant as the person's agent for the service of process in any action or proceeding by the board of this state against the person.

(3) A special practice permit issued under this section may be renewed on an annual basis in the manner prescribed by the board by rule.

(4) The board may adopt rules, including rules establishing fees that are commensurate with costs, to implement 37-50-324 and this section.

**History:** En. Sec. 1, Ch. 541, L. 2005.

**37-50-324. Nonresident registration.** (1) A person, firm, partnership, corporation, or other business entity that offers to engage in or engages in public accounting services in Montana through a person holding a special practice permit shall register with the board.

(2) (a) A person with a special practice permit engages in unprofessional conduct if the person offers services for or on behalf of a person, firm, partnership, corporation, or other business entity that is not registered with the board pursuant to 37-50-335 or this section.

(b) A person, firm, partnership, corporation, or other business entity may not lawfully engage in or assist in providing public accounting services in this state unless properly registered with the board under 37-50-335 or this section.

**History:** En. Sec. 2, Ch. 541, L. 2005.

**37-50-325 through 37-50-329 reserved.**

**37-50-330. Corporations and partnerships -- registration -- compliance with ownership requirements.** (1) A corporation or partnership composed of certified public accountants or a corporation or partnership composed of public

accountants that is or plans to become engaged in the practice of public accounting may include individuals who are not licensed as public accountants or certified as certified public accountants if:

(a) the corporation or partnership designates an accountant who is licensed or certified in this state to be responsible for the proper registration of the corporation or partnership;

(b) a simple majority of ownership in the corporation or partnership, in terms of equity and voting rights, is held by accountants who are licensed or certified accountants in this state or in another jurisdiction;

(c) all persons with an ownership interest in the partnership or corporation are individuals actively participating in the business of the partnership or corporation; and

(d) any person with an ownership interest in the partnership or corporation who is not licensed or certified as an accountant and who holds a professional license, registration, or certification issued by this state or another jurisdiction is in compliance with the requirements for that license, registration, or certification.

(2) An accountant licensed or certified in this state who holds an ownership interest in a partnership or corporation organized pursuant to this section is ultimately responsible for all services provided by the partnership or corporation including any unit, branch, or division of the partnership or corporation providing attestation services.

(3) (a) A partnership or corporation that is no longer in compliance with the ownership requirements of subsection (1)(b) shall give notice to the board within 90 days of the noncompliance.

(b) The board shall grant the partnership or corporation a reasonable amount of time to reestablish compliance with the ownership requirements of subsection (1)(b). The time granted by the board to a partnership or corporation to reestablish compliance may not be less than 90 days from the date the board receives the partnership's or corporation's notice of noncompliance.

(c) The failure of a partnership or corporation to reestablish compliance with the ownership requirements of subsection (1)(b) is grounds for the board to suspend or revoke the partnership's or corporation's registration required by 37-50-335.

**History: En. Sec. 1, Ch. 123, L. 2001.**

**37-50-331. Repealed.** Sec. 3, Ch. 123, L. 2001.

**History: En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.**

**37-50-332. Repealed.** Sec. 3, Ch. 123, L. 2001.

**History: En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.**

**37-50-333. Repealed.** Sec. 3, Ch. 123, L. 2001.

**History: En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974;**



**R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979; amd. Sec. 16, Ch. 335, L. 1983.**

**37-50-334. Repealed.** Sec. 3, Ch. 123, L. 2001.

**History:** En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979; amd. Sec. 17, Ch. 335, L. 1983.

**37-50-335. Registration of offices.** Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, by a partnership or corporation of certified public accountants, by a licensed public accountant, by a partnership or corporation of licensed public accountants, or by a foreign accountant recognized under 37-50-313 must be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314.

**History:** En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979; amd. Sec. 18, Ch. 335, L. 1983; amd. Sec. 9, Ch. 375, L. 2003.

**37-50-336. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

**37-50-337 through 37-50-340 reserved.**

**37-50-341. Initiation of proceedings -- hearings and rulemaking.** (1) The board may initiate proceedings under this chapter either on its own motion or on the complaint of a person.

(2) Hearings and rulemaking proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

**History:** En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836.

## **Cross-References**

Montana Administrative Procedure Act, Title 2, ch. 4.

**37-50-342. Violation.** Any person who violates any provision of this chapter or the rules of the board is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500, by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

**History:** En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840; amd. Sec. 19, Ch. 335, L. 1983.

## **Part 4**

### **Miscellaneous Provisions**

#### **37-50-401. False statements by accountants -- misdemeanor -- penalty.**

Any person practicing as an accountant, public accountant, auditor, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, shall issue or permit the issuance of any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$500 or more than \$2,000 or imprisoned for a period of not less than 90 days or more than 1 year or subjected to both said fine and imprisonment, in the discretion of the court.

**History:** En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808.

**37-50-402. Privileged communications -- exceptions.** (1) Except by permission of the client, person, firm, or corporation engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, firm, or corporation and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee thereof may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(2) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.

**History:** En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841; amd. Sec. 20, Ch. 335, L. 1983; amd. Sec. 1, Ch. 82, L. 1993.

#### **Cross-References**

Evidence -- privileges, Title 26, ch. 1, part 8.

**37-50-403. Nonliability -- evidential privilege -- application to nonprofit corporations.** (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice the accounting profession is not liable in damages to any person for any action taken or

recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge; however, he may not be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting.

**History: En. Sec. 1, Ch. 197, L. 1991.**